IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 313 of 2007
Date of Decision: 5.2.2007

Inderjit Sengupta ...Petitioner

Versus

Sanjiv Nayyar ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri J.R. Mittal, Senior Advocate, with
Shri Lalit Sharma, Advocate, for the petitioner.

Shri Rajesh Sood, Advocate, for the caveator-respondent.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court on 24.10.2006, whereby an application filed by the plaintiff-respondent for restoration of the suit was allowed subject to payment of costs of Rs.3000/-.

The suit for specific performance filed by the plaintiff-respondent was dismissed in default on 18.9.2004. An application for restoration of the suit was filed on 21.9.2004, which has been allowed by the learned trial Court vide the order impugned in the present revision petition. It is the case of the plaintiff that on the date fixed, the counsel engaged by the plaintiff was busy in his personal case, whereas the plaintiff himself was in custody. Taking into consideration the facts and circumstances, the learned trial Court has passed an order of restoration of the suit.

The grievance of the petitioner is that the plaintiff has

not fixed the proper Court fee and on 18.9.2004, the application filed by the petitioner, calling upon the plaintiff to produce the original agreement of sale was fixed for the filing of reply by the plaintiff. Instead of filing original agreement of sale in the Court and fixing the proper Court fee, the plaintiff got his suit dismissed in default.

The learned trial Court has found from the record produced that in fact the counsel for the plaintiff was occupied in his personal matter at Kharar, whereas the plaintiff himself was in custody. Keeping in view the said fact, the factum of the application calling upon the plaintiff to produce original agreement of sale or the payment of the proper Court fee, cannot be taken into consideration at the stage of considering the application for restoration of the suit, which was dismissed in default on 18.9.2004. It may be noticed that the application for restoration of the suit was filed just two days later, after the dismissal of the suit in default.

In view of the above, I do not find patent illegality or irregularity in the impugned order passed by the learned trial Court, which may warrant interference by this Court in exercise of its revisional jurisdiction.

Hence, the present petition is dismissed.

05-02-2007 (HEMANT GUPTA)
ds JUDGE